

proposal by these individuals to acquire a new station. See *Allegan County Broadcasters, Inc.*, 83 FCC 2d 371, 373-74 ¶ 6 (1980).

6. Under some circumstances, at the time a proceeding is designated for hearing, the Commission makes a determination as to whether the allegations raised against an applicant affect that applicant's ability to retain or acquire other stations. See *Character Qualifications*, 102 FCC 2d 1179, 1220-25 ¶¶ 83-95 (1986), recon. denied, 1 FCC Rcd 421 (1986) (discussing the policy, originally enunciated in *Grayson Enterprises, Inc.*, 79 FCC 2d 936 (1980) and modified by *Transferability of Broadcast Licenses*, 53 RR 2d 126 (1983)). The parties ask that a *Grayson* determination be made here.

II. GRAYSON DETERMINATION

7. In a decision in this proceeding, the Review Board held that Adwave and Laudersea lacked the basic qualifications to be Commission licensees. *RKO General, Inc. (WAXY - FM)*, 4 FCC Rcd 4679 (Rev. Bd. 1989). The Board affirmed a finding to that effect made in the partial initial decision by Administrative Law Judge Joseph Stirmer. *RKO General, Inc. (WAXY - FM)*, 2 FCC Rcd 3348 (I.D. 1987). George F. Gardner is the 100 percent stockholder of Adwave, and Rosemarie A. Reardon is the sole proprietor of Laudersea.

8. The Board found that Gardner lacked candor before the Commission in connection with his categorical pledge that he and his wife would "divest themselves of all of the stock they own" in several cable systems. By means of this pledge, Gardner intended that these interests should not be attributed to Adwave in the comparative analysis of the applicants. According to the Board, Gardner had no intention of divesting himself of these stock interests. Rather, it was revealed that he intended to place the stock in a voting trust that retained for him almost all of the benefits of stock ownership, including the ability to participate in the management of the cable systems. 4 FCC Rcd at 4683 ¶¶ 22-24.

9. The Board held that the trust arrangement was an ineffective and disingenuous attempt to obtain a comparative advantage. Additionally, the Board found that Gardner, an experienced businessman, knew that the trust arrangement could not fairly be described as a "divestiture" of the stock. *Id.* at 4684 ¶ 29.

10. The Board found that Reardon had falsely certified that Laudersea was financially qualified to be a licensee. Laudersea did not have net liquid assets on hand or available from committed sources to meet its initial costs of construction and operation. *Id.* at 4688 ¶ 43. Although Reardon discussed financing generally with a local banker, the banker made no commitment - oral or written - to Laudersea. *Id.* at 4685-86 ¶¶ 36-37. The Board found that Reardon had no reasonable basis for certifying that Laudersea was financially qualified or for representing that Laudersea had a bank commitment. *Id.* at 4688 ¶ 44. In the Board's view, Reardon had been disingenuous and recklessly disregarded the truth in so doing. *Id.* at 4689 ¶ 48.

11. Despite these findings of misconduct, both Adwave and Laudersea assert that their principals can be found qualified to acquire additional stations. Both claim that the alleged misconduct represents isolated misjudgment

that will not recur at other stations. They also contend that their principals will be deterred from further misconduct by the painful litigation in this proceeding.

12. More specifically, Adwave emphasizes that the alleged misconduct did not involve a continuing effort to mischaracterize Gardner's intentions. Adwave maintains that after questions were raised about Gardner's divestiture pledge at a deposition, Gardner fully disclosed his plans. Adwave also asserts that Gardner has had an unblemished past broadcast record in connection with his ownership of WQVE-FM in Mechanicsburg, Pennsylvania (1978-82), WEEO in Waynesboro, Pennsylvania (1971-80 and 1983-84), and WTTO in Toledo, Ohio (1973-76).

13. Similarly, Laudersea attributes the alleged misconduct to Reardon's inexperience in broadcasting and the inadequate assistance of her communications counsel. According to Laudersea, Reardon's good faith is demonstrated by the fact that, after questions were raised about her conduct, she acted expeditiously to cure Laudersea's financial deficiencies and retained new communications counsel.

14. Accordingly, Adwave and Laudersea argue that there is no substantial likelihood that the allegations against Gardner and Reardon would bear upon the operation of other stations. See *Grayson*, 79 FCC 2d 940 ¶ 10. As an additional matter, Adwave and Laudersea contend that granting their requested relief will serve the public interest by helping to resolve the RKO proceedings.

15. The Mass Media Bureau opposes the requested relief. The Bureau argues that Gardner and Reardon were found to have committed serious misconduct that impeaches their truthfulness and reliability vis-a-vis future applications. Moreover, the Bureau asserts that a failure to take this misconduct in account would undermine the deterrent aspects of the licensing process. Procedurally, the Bureau questions whether the rationale for permitting an existing licensee in hearing to transfer co-owned stations, not involved in misconduct, should be extended to permit a new applicant of doubtful character to acquire other stations. Hence, the Bureau contends that there is no justification here for ruling that Gardner and Reardon may freely acquire additional stations. In the Bureau's view, the fact that this is one of the RKO proceedings does not warrant special treatment.

16. In its reply to the Bureau, Adwave concedes that the Commission does not ordinarily make a *Grayson* determination in proceedings involving new applicants. Adwave asserts that such a determination is warranted here because (1) there is no need to postpone a determination of Gardner's qualifications, given the availability of a full record here, and (2) a favorable determination would facilitate the resolution of the RKO proceedings. Adwave asserts that a new applicant found unqualified in one proceeding is not automatically disqualified from receiving a different authorization. In view of the unique nature of this proceeding, Adwave contends that a favorable *Grayson* determination would not undermine considerations of deterrence.

17. Initially, we agree with the parties that the public interest benefits of entertaining settlements in the RKO proceedings warrant undertaking a *Grayson* determination here, although such a determination would not routinely be made in the case of new applicants. As we have noted, settlements in the RKO proceedings offer the possibility of terminating one of the most protracted and burdensome proceedings in the Commission's history and

putting RKO's stations into the hands of unquestionably qualified licensees able to devote their full resources to broadcasting. We have recognized that undertaking a *Grayson* determination in the case of a new applicant is somewhat more difficult than it is in the case of an existing licensee. *Character Qualifications*, 102 FCC 2d at 1225 ¶ 95. In view, however, of the unusual public interest benefits of the settlement process in the RKO proceedings, we will undertake this more difficult task here.

18. Turning to the merits, we will grant the relief requested by the parties – but only conditionally. We cannot find on the record before us that Gardner and Reardon are qualified, without reservation, to acquire additional stations. As the Bureau points out, Gardner and Reardon allegedly committed serious misconduct that we cannot ignore.³ The Commission believes that truthfulness is a key element of character necessary to operate a broadcast station in the public interest. *Character Qualifications*, 102 FCC 2d at 1210 ¶ 60.⁴ Misconduct involving such a deficiency does not, however, necessarily bar an applicant from further broadcast ownership. In some cases, we have found that an isolated transgression does not disqualify an applicant from further broadcast ownership. See *United Broadcasting, Inc.*, 100 FCC 2d 1574, 1583-86 ¶¶ 20-25 (1985); *WIOO, Inc.*, 95 FCC 2d 974, 983-84 ¶ 23 (1983); *Faulkner Radio, Inc.*, 88 FCC 2d 612, 615-18 ¶¶ 11-17 (1981).⁵ These cases, however, involved factors not present here – for example, the deterrent impact of previously having an application denied, as a basis for concluding that a recurrence of misconduct is unlikely.

19. Thus, these cases do not directly support a finding that Gardner and Reardon may be found unconditionally qualified to acquire additional stations. Nonetheless, other factors suggest that the alleged misconduct should not necessarily bar Gardner or Reardon from acquiring additional stations. Several years will have elapsed since the alleged misconduct assertedly occurred.⁶ The applicants may be able to show that their conduct and compliance with the law during the intervening time between the alleged misconduct and the filing of new applications has been beyond reproach. The factor of rehabilitation will be significant to any future determination as to their fitness to be broadcast licensees. See *Character Qualifications*, 102 FCC 2d at 1228-29 ¶ 105.

20. In this regard, the alleged misconduct, although serious, represents an isolated incident and not a pattern of repeated misconduct suggesting a pervasive unwillingness or inability to meet the basic responsibilities of a licensee. (Indeed, Gardner has an unblemished prior broadcast ownership record.) See *Faulkner*, 88 FCC 2d at 616 ¶ 12. Hence, the alleged misconduct here does not inherently indicate that Gardner and Reardon should be barred from further broadcast ownership in perpetuity.⁷

21. Accordingly, we will afford Gardner and Reardon the opportunity to submit a showing of good character in connection with any application for a new station. If, in their showing, the applicants make an affirmative demonstration of rehabilitation and establish that they then possess good character, we would regard such a showing as favorably resolving our concerns about the alleged misconduct. At minimum, the submission should demonstrate that: (1) the applicant has not been involved in any significant wrongdoing since the alleged broadcast-related misconduct occurred; (2) the applicant enjoys a reputation for good character in the community; and (3)

the applicant intends to undertake meaningful measures to prevent the future occurrence of FCC-related misconduct. See, e.g., *Central Broadcasting Co.*, 11 FCC 259, 280-81 ¶¶ 6-8 (1946); *Catamount Broadcasters, Inc.*, 70 FCC 2d 913, 916-18 ¶¶ 7-11 (Rev. Bd. 1976). Of course, there should be no occurrence of misconduct in connection with the new application. The applicants' submissions will be subject to scrutiny by the Mass Media Bureau, which may make further inquiries if deemed necessary. Moreover, any persons with adverse information about the applicants may submit this to the Commission.

22. In our view, these measures will serve to impress on Gardner and Reardon, as well as applicants generally, the seriousness with which we view relevant misconduct. We emphasize that Gardner and Reardon do not walk away from the alleged misconduct "scot-free" but remain subject to heightened scrutiny necessitating an affirmative good character showing (which is not ordinarily required of applicants). A further point should also be clearly understood. As a procedural matter, we have found that the public interest benefits of settlements in the RKO proceedings warrant undertaking a *Grayson* determination in a situation where we would not routinely undertake one. Substantively, however, we have not reduced our concern for licensee character merely because this is an RKO proceeding.

III. PUBLIC INTEREST DETERMINATION

23. We now turn to the more general aspects of the settlement agreement. We have fully considered and approved a settlement agreement similar to the instant one in the KHJ-TV, Los Angeles, California proceeding (Docket Nos. 16679-80). *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988), appeal docketed sub nom. *New South Media Corp. v. FCC*, No. 88-1683 (D.C. Cir. Sept. 19, 1988).⁸ We there concluded that strong public interest considerations favor settling what has become one of the most protracted and burdensome proceedings in the Commission's history. Although the circumstances in this case are not identical to those in the Los Angeles proceeding, we believe that essentially the same public interest considerations govern both proceedings. That is, we continue to believe that the public interest is better served in this case by ending this uniquely protracted litigation – which threatens to continue for many years to come – so that RKO can withdraw as a licensee and an unquestionably qualified licensee, able to devote its full resources to broadcasting, can take over the ownership of the stations and operate them without a cloud of uncertainty hanging over its head.

24. We also note that approving the settlement would preserve our policy of deterring licensee misconduct. RKO would not receive full compensation for the license. Under the terms of the settlement agreement, RKO would receive only 60 percent of the proceeds of the sale.⁹ Further, RKO has already suffered the loss of WNAC-TV in Boston, now worth more than \$400 million. And it has received substantially less than full value for 11 stations sold pursuant to other settlements. In addition, RKO must either withdraw entirely from broadcasting or risk the loss of its remaining station if the Commission finds it unqualified in Phase I of the KHJ-TV proceeding. Consistent with our disposition of the KHJ-TV agreement, therefore, and for the reasons stated more fully there and which we

incorporate herein by reference, we hold that approving the agreement before us would serve the public interest. Similarly, we find that the agreement complies with 47 U.S.C. § 311(d) and 47 C.F.R. § 73.3525.

25. We note, moreover, that in pleadings filed October 11 and November 16, 1989, the Bureau states that it has no objections to approval of the settlement agreement (other than its objections under the *Grayson* question). The Bureau also states that it has reviewed the assignment application and finds that the proposed assignee is qualified. In this regard, the Bureau recommends that we grant Ackerley a waiver of the Commission's attribution rules. See 47 C.F.R. § 73.3555 Note 2(h).

26. The need for a waiver arises from the following facts. John A. Canning, a director of Ackerley's parent corporation, is the president of First Financial Investment Corporation. First Financial and an affiliated company own a 21 percent nonvoting stock interest in the licensee of station WLTV(TV) in Miami, Florida (part of the same market as Fort Lauderdale). Canning's dual interests do not violate the Commission's rules, but they might raise a question under the Commission's cross-interest policy. This is so because Ackerley's interest in WAXY-FM is attributable to Canning under the Commission's rules and First Financial's interest in WLTV(TV), although not attributable under the rules (because a nonvoting stock interest is involved), is significant for cross-interest purposes. See *Reexamination of the Commission's Cross-Interest Policy*, 2 FCC Rcd 3699, 3700 ¶ 12 (1987), 4 FCC Rcd 2035, 2036-37 ¶¶ 12-13 (1989).

27. Consistent with the criteria set forth in 47 C.F.R. § 73.3555 Note 2(h), Ackerley has submitted documentation indicating that Canning's responsibilities as a director of Ackerley's parent are wholly unrelated to broadcasting. Thus, as provided by the rule, we will waive the attribution of Ackerley's interest in WAXY-FM to Canning that would otherwise result from his status as a director of Ackerley's parent. The waiver of attribution breaks the problematic nexus between WAXY-FM and WLTV(TV) and thereby eliminates the possibility of a cross-interest problem.

IV. ORDERS

28. ACCORDINGLY, IT IS ORDERED, That the Joint Petition for Approval of Settlement Agreement and Related Relief filed August 11, 1989 IS GRANTED and the associated Agreements ARE APPROVED.¹⁰

29. IT IS FURTHER ORDERED, That 47 C.F.R. § 73.3555 Note 2(h) IS WAIVED to the extent that it would otherwise attribute the media interests of John A. Canning to Ackerley Radio of Florida, Inc.

30. IT IS FURTHER ORDERED, That the following applications for renewal of license and for construction permits ARE DISMISSED with prejudice: RKO General, Inc. (File No. BRH-781002WR), Adwave Company (File No. BPH-830510AL), COZZIN Communications Corporation (File No. BPH-830512AW), and Lauderdale Broadcasting Company (File No. BPH-830512CP); and that the applications of South Jersey Radio, Inc. (File Nos. BPH-830511AK, BLH-890814KI) for construction permit and for license to cover the construction permit ARE GRANTED; and that the application for the assignment of WAXY-FM (File No. BALH-890814ED) IS GRANTED.

31. IT IS FURTHER ORDERED, That the partial initial decision and the Review Board decision dealing with the qualifications of the various applicants for a construction permit (*RKO General, Inc. (WAXY - FM)*, 2 FCC 3348 (I.D. 1987), aff'd, 4 FCC Rcd 4679 (Rev. Bd. 1987)) ARE VACATED as moot;¹¹ that the allegations raised in this proceeding concerning George F. Gardner and Rosemarie A. Reardon ARE DEEMED not to bear on their ability to acquire additional broadcast stations, provided that they submit, in conjunction with any application for a new station, an adequate showing of good character, as set forth in paragraph 21 above; that the applications for review of the Board's decision filed July 6 and 7, 1989 concerning the comparative qualifications of the various applicants ARE DISMISSED as moot;¹² and that the Review Board IS DIRECTED to dismiss as moot the petition for reconsideration dealing with the qualifications of Adwave.

32. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ The payments to the other applicants would be distributed as follows:

Adwave	\$2,000,000
South Jersey (and a principal)	\$2,900,000
COZZIN (and a principal)	\$1,500,000
Laudersea	\$2,000,000

² A detailed history of these proceedings is set forth in *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988).

³ As the parties point out, in making a *Grayson* determination, we do not undertake to review the merits of the decision below. (Indeed, ordinarily such a determination would be made at the time a hearing on alleged misconduct was designated, rather than after a decision.) Rather, we assume that the alleged misconduct occurred as found and consider its implications with respect to the applicant's qualifications to acquire stations in the future. See Joint Petition for Approval of Settlement Agreement and Related Relief at 10 n.20.

⁴ This case differs from *RKO General, Inc. (WHBQ - TV)*, FCC 90-17 (adopted Jan. 11, 1989), in which we held that a dismissing applicant's alleged false certification of his financial qualifications did not bar his acquisition of additional stations. There, we concluded that the ALJ's findings of fact, on their face, did not suggest a lack of honesty. We therefore, of necessity, implicitly overturned the initial decision (which was based on precedent that the Commission has since disavowed) in that narrow regard. The ALJ found that the applicant had received oral assurances that necessary funds would be available and had been advised by his attorney that these assurances were adequate. In this case, the Board's findings indicate greater culpability.

⁵ We find these cases more apposite than *Straus Communications, Inc.*, 2 FCC Rcd 7469 (1987), cited by the parties. In *Straus*, the Commission held that allegations of misconduct, including false financial certification, did not bar a licensee from transferring a station uninvolved in the alleged misconduct. That decision turned to a significant extent on procedural and public interest factors, not relevant here, specifically relating to the transfer of a licensee's existing station. The Commission noted that no limitation had been put on the transferability of the station in question and that the public interest favored the immediate transfer of the station to a qualified applicant. Because the applicants here seek the right to acquire stations rather than divest themselves of stations, the specific rationale of *Straus* cannot be applied to the facts before us. We therefore consider it more appropriate to examine precedent relating more generally to the character qualifications of multiple owners.

⁶ For example, Gardner filed the amendment containing his original divestiture pledge on March 27, 1984 and repeated it in a hearing exhibit filed February 19, 1985. 4 FCC Rcd at 4680 ¶ 10, 4681 ¶ 13. Reardon filed the application with the allegedly false certification on May 12, 1983. Adwave Exh. 8.

⁷ Compare *L. D. S. Enterprises, Inc.*, 86 FCC 2d 283 (1981). There, the Commission considered an application to acquire a new station by a proposed assignee whose licenses for five co-owned stations had previously been denied because of misconduct. The applicant submitted a showing that he had conducted his affairs in an ordinary and prudent fashion since the loss of his licenses and that he was willing to undertake remedial measures to ensure future compliance with his obligations as a licensee. That applicant's showing was deemed inadequate because of the gravity of his past conduct -- a willful and knowing pattern of misconduct and complete disregard of his responsibilities as a broadcaster -- and his application was designated for a modified hearing procedure. 86 FCC 2d at 286 ¶ 7.

⁸ We have also approved seven settlements involving 11 other RKO stations. See *RKO General, Inc. (WHBQ)*, 3 FCC Rcd 5055 (1988); *RKO General, Inc. (WGMS)*, 3 FCC Rcd 5262 (1988); *RKO General, Inc. (WRKO)*, 3 FCC Rcd 6603 (1988); *RKO General, Inc. (WOR)*, 4 FCC Rcd 4072 (1989); *RKO General, Inc. (WFYR-FM)*, 4 FCC Rcd 4083 (1989); *RKO General, Inc. (KRTH)*, 4 FCC Rcd 4089 (1989); *RKO General, Inc. (WOR)*, 4 FCC Rcd 5747 (1989).

⁹ As in *KHJ-TV*, it is significant to our approval of the agreement that RKO is receiving significantly less than 75 percent of the fair market value of the station.

¹⁰ As they have requested, the parties may consummate the mutually contingent transactions in a single closing. Our action shall be effective with respect to the termination of the parties' hearing rights upon their notifying us of closing under those transactions.

¹¹ The parties request this relief, and it is customary practice. See *United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950); *Boston Community Media Committee, Minority Caucus v. FCC*, 509 F.2d 516, 517 (D.C. Cir. 1975). This action does not affect those portions of the Board's decision dealing with the basic qualifications of COZZIN, which are relevant to another pending proceeding.

¹² With the exception of the application for review filed by COZZIN.

LAW OFFICES
COHEN AND BERFIELD, P.C.

BOARD OF TRADE BUILDING
1129 20TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 466-8565

LEWIS I. COHEN
MORTON L. BERFIELD
ROY W. BOYCE
JOHN J. SCHAUBLE*

TELECOPIER
(202) 785-0934

*VIRGINIA BAR ONLY

March 14, 1990

RECEIVED

MAR 14 1990

Federal Communications Commission
Office of the Secretary

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: BPTTL-890309NY Lancaster, PA

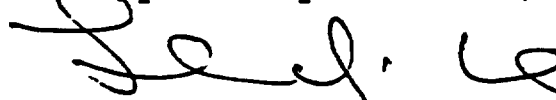
Dear Ms. Searcy:

On behalf of Raystay Company there is attached hereto declarations of George Gardner, Robert W. Chilton, Gilmore B. Seavers, Rev. Andrew J. Fontanella, Stanley T. Singer and Lincoln A. Warrell. These documents are submitted pursuant to the Commission's Memorandum Opinion and Order in RKO General, Inc. (WAXY-FM), MM Docket No. 84-1112, FCC 90-18 released February 2, 1990. At paragraph 21 the Commission stated "Accordingly, we will afford Gardner the opportunity to submit a showing of good character in connection with any application for a new station." Mr. Gardner is the controlling stockholder of Raystay Company, which is the tentative selectee for five LPTV stations that are still pending:

BPTTL-890309NX	Red Lion, PA
BPTTL-890309NY	Lancaster, PA
BPTTL-890309NZ	Lebanon, PA
BPTTL-890309PA	Lancaster, PA
BPTTL-890309TD	Lebanon, PA

It is respectfully submitted that based upon the showing attached hereto, the Commission should grant these five LPTV applications.

Respectfully submitted,



Lewis I. Cohen
Counsel for Raystay Company

Enclosures

Deduction No. 93-75		DATE 12.2.93	
By		12.2.93	
12.2.93		12.2.93	
12.2.93		12.2.93	

DECLARATION

George F. Gardner hereby declares under penalty of perjury that the following is true and correct to the best of his personal knowledge:

I am the sole stockholder, director and an officer of Adwave Company, which was an applicant for a new FM station at Fort Lauderdale, Florida (File No. BPH-830510AL; MM Docket No. 84-1113). The proceeding involving Adwave was resolved by settlement approved by the Commission in RKO General, Inc. (WAXY-FM), FCC 90-18, released February 2, 1990 (RKO). As reflected at para. 7 to 22 thereof, the effect of the settlement was to leave an unresolved character issue concerning Adwave. RKO also therein adopted procedures governing the consideration of the impact of that issue in connection with future broadcast applications in which I am involved.

I am also the controlling stockholder, an officer and a director of Raystay Company (Raystay). Raystay is the licensee of LPTV station W40AF, Dillsburg, Pa. and the tentative selectee for five LPTV stations that are still pending:

BPTTL-890309NX	Red Lion, PA
BPTTL-890309NY	Lancaster, PA
BPTTL-890309NZ	Lebanon, PA
BPTTL-890309PA	Lancaster, PA
BPTTL-890309TD	Lebanon, PA

See Report No. GL89-3, released June 16, 1989. This Declaration is designed to meet the first and third tests set forth in para. 21 of RKO in order to justify the grant of the five LPTV applications noted above. The second test (reputation in the community) will be met by Declarations of persons with knowledge of my reputation in the Carlisle, Pennsylvania community where I principally reside and conduct business.

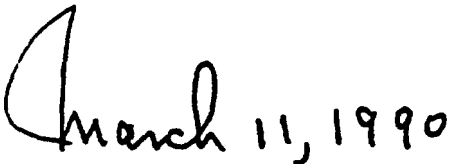
Since the filing of the Adwave application in 1983, no allegations have been made of any significant broadcast-related misconduct by myself or any company in which I am involved, and I am aware of no such misconduct. As noted at para. 20 of RKO, I had a previously unblemished record of broadcast ownership, which is detailed at para. 42 of RKO General, Inc. (WAXY), 2 FCC Rcd 3348 (ID 1987).

The issue against Adwave involved a finding that I improperly proposed to divest other media interests in which I was involved. While I never intended to deceive the Commission, I now realize the importance of being absolutely candid in applications and statements made by me to the Commission, and have resolved to carefully review any such applications and statements to ensure that they fully and accurately disclose any pertinent facts. I would note in this respect that, prior to RKO, Exhibit 3 to each of the pending LPTV applications made full disclosure of the adverse Initial Decision against

Adwave, and the applications were amended on July 6, 1989 to report the Review Board's affirmance of the Initial Decision. These actions I believe reflect my desire to ensure that the LPTV staff be fully informed as to these pertinent facts.

I would accordingly urge that the circumstances warrant a conclusion that Raystay is qualified to be the licensee of the five LPTV stations at issue.


George F. Gardner

Date:  March 11, 1990

LAW OFFICES
COHEN AND BERFIELD, P.C.

BOARD OF TRADE BUILDING

1129 20TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 466-8565

LEWIS I. COHEN
MORTON L. BERFIELD
ROY W. BOYCE
JOHN J. SCHAUBLE*

*VIRGINIA BAR ONLY

TELECOPIER
(202) 785-0934

May 7, 1990

RECEIVED

MAY - 7 1990

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

RE: BPTTL-890309NY Lancaster, PA

Dear Ms. Searcy:

On behalf of Raystay Co. there is attached hereto a Declaration of George Gardner. This Declaration is a supplement to Mr. Gardner's Declaration filed on March 14, 1990 in the above captioned proceeding.

It is respectfully submitted that based upon the showing contained in this and the March 14 Declaration, the Commission should grant the above captioned application.

Respectfully submitted,


Lewis I. Cohen
Counsel for Raystay Company

Enclosure

Federal Communications Commission

Docket No. 43-75 Exhibit No. 14F-259

Presented by Examiner

Disposition { Identified 12-2-93
Received 12-2-93
Rejected

Reporter G. W. Dwyer

Date 12-2-93

DECLARATION

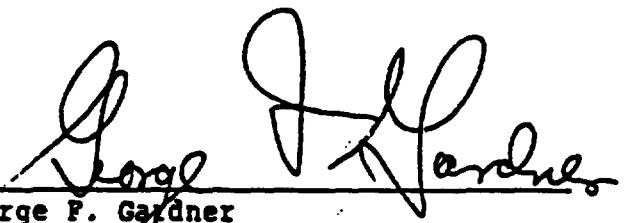
George F. Gardner hereby declares under penalty of perjury that the following is true and correct to the best of his personal knowledge:

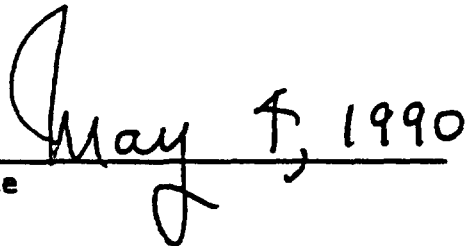
This Declaration is intended by me to supplement my early declaration dated March 11, 1990 which was submitted to the Commission on March 14, 1990.

Since the filing of the Advave application in 1983, no allegations have been made of any significant misconduct of any kind by myself or any company of which I am involved, and I am aware of no such misconduct. Out of an abundance of caution (since I do not believe it reflects significant misconduct), I would note that Raystay Co. was assessed a forfeiture of \$2,000 for repeated instances of signal leakage in excess of that permitted by the Rules on its cable television system in the Carlisle, Pennsylvania area. Raystay Co., 65 RR2d 1191 (1988).

In connection with the operation of low power station W40AF licensed to Raystay Co., I have instructed my FCC counsel, who are also Raystay's FCC counsel, to devise a compliance program which will ensure that Raystay's operation of its low power television station is strictly in compliance with all Commission Rules and Regulations. I have further instructed counsel to report to me at three month intervals regarding continuing compliance with Commission Rules and Regulations. This will permit me to satisfy myself on this important matter. If the Commission grants the five pending LPTV applications, the compliance program will be extended to include these stations.

I respectfully reaffirm that the circumstances warrant the conclusion that Raystay is qualified to be the licensee of the five LPTV stations at issue.


George F. Gardner


Date

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

23 JUL 1990

IN REPLY REFER TO:

George F. Gardner, President
Raystay Company
P.O. Box 38
Carlisle, Pennsylvania 17013

In re: Low Power Television Applications of:
Raystay Company

~~BPTTL-890309NX~~ Red Lion, PA
~~BPTTL-890309NY~~ Lancaster, PA
~~BPTTL-890309NZ~~ Lebanon, PA
~~BPTTL-890309PA~~ Lancaster, PA
BPTTL-890309TD Lebanon, PA

Dear Mr. Gardner:

This is in reference to the above-captioned applications for low power television stations of Raystay Company (Raystay).

In 1984, the Commission designated for comparative hearing the license renewal application of RKO General, Inc. for Station WAXY-FM, Fort Lauderdale, Florida. One of the mutually exclusive applications in the proceeding was that of Adwave Company, wholly owned by you. You are also the president and controlling stockholder of Raystay which owns and operates several cable systems. In that proceeding, the Presiding Judge concluded that you deceived the Commission by a false divestiture commitment. RKO General, Inc., 2 FCC Rcd 3348 (ID 1987). The Review Board upheld this determination. RKO General, Inc., 4 FCC Rcd 4679, 4683 (Rev. Bd. 1989).

When the Station WAXY-FM settlement agreement was submitted to the Commission in 1989, you requested a ruling that your misconduct in the proceeding not bar you from acquiring other stations. In a Memorandum Opinion and Order, RKO General, Inc., 5 FCC Rcd 642, released February 2, 1990, the Commission vacated the underlying decisions as moot, but refused your request to find you unconditionally qualified to acquire additional stations. The Commission held that you should be subject to "heightened scrutiny" in reference to any future applications for a new station, which would require an affirmative showing of good character. The Commission said that you must, at a minimum, submit showings with future applications that: (1) you have not been involved in any significant wrongdoing since the misconduct in RKO occurred; (2) you enjoy a reputation for good character in the community; and (3) you intend to undertake meaningful measures to prevent the future occurrence of FCC-related misconduct. The Commission

Identified with original and returned

Docket No. 93-79 70 7136-260

Produced by Emmons

Disposition	{	Identified	<u>12.2.93</u>
		Received	<u>12.2.93</u>
		Rejected	

Reporter A. Wilson

Date 12.2.93

also stated that any persons with adverse information may submit this information for consideration with the application. The Commission stated that this review was to be conducted by the Mass Media Bureau, which would render a determination. Id. at 644.

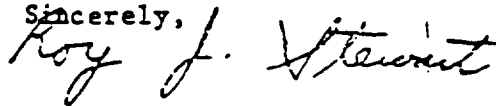
On March 14, 1990, you filed a showing with respect to the above-captioned low power television applications. Included in this showing is your statement that since the filing of the application included in the RKO hearing, there have been no allegations made of any significant broadcast-related misconduct by yourself or any company in which you are involved. In addition, five declarations attesting to your reputation for good character were submitted. Each declaration states that the declarant has known you for an extended period of time and that you enjoy a good reputation in your community. Further, your showing includes a statement that you disclosed the prior misconduct in each of your low power television applications, and that you now realize the importance of being absolutely candid with the Commission.

On May 7, 1990, you submitted an amended showing at the staff's request. In this showing you revealed that Raystay had been assessed a forfeiture in 1987 (affirmed by the Commission in 1989) for signal leakage in excess of that permitted by the rules on its cable television system in the Carlisle, Pennsylvania area. Aside from this, you state that there has been no significant wrongdoing of any kind since the RKO incident. Further, with respect to Raystay's existing low power television station and the five proposed stations, you state that you have instructed your counsel to devise a compliance program which will ensure that Raystay's operation of its low power television stations is strictly in compliance with all Commission rules and regulations. You have further instructed counsel to report to you at three-month intervals regarding continuing compliance with Commission rules and regulations.

We believe that your submissions in this instance warrant grant of the above-captioned applications. The Carlisle forfeiture proceeding involved matters of importance to the Commission, but the record there does not establish that the derelictions flowed from a lack of requisite character. Nor does the record before us disclose a pattern of noncompliance with technical requirements either at the Carlisle or any of the other Raystay cable television systems. However, we see no reason at this time to remove the RKO procedure for all future applications for new stations. In view of the Commission's clear directive to the Bureau, we believe it is appropriate to continue to subject future applications by you to "heightened scrutiny." This review is especially warranted in view of the short length

of time since the Commission's opinion. Accordingly, an affirmative showing of rehabilitation and good character, in accordance with the guidelines set out in RKO, must be submitted to the Bureau with future applications to acquire or construct broadcast stations. Grant of those applications will be dependent on fulfillment of the requirements set forth by the Commission.

Sincerely,



Roy J. Stewart
Chief, Mass Media Bureau

cc: Lewis I. Cohen, Esq.